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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,403	04/03/2001	Kenneth W. Shrum	10003507-2	1629

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EXAMINER

PHAM, HUNG Q

ART UNIT	PAPER NUMBER
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2162

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/825,403	<b>Applicant(s)</b> SHRUM ET AL.	
	<b>Examiner</b> HUNG Q PHAM	<b>Art Unit</b> 2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 5-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,2 and 10-17 is/are rejected.
- 7) ☐ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

A copy of Hewlett-Packard Firehunter Concepts Guide, printed in April 1999 and having part no. 5969-2201, was provided by Applicants on 10/20/2004 as respectfully requested by examiner in the previous Action. Examiner wishes to thank Applicants for replying to this requirement.

The amended feature of claim 10 has been fully considered, and the rejection of claim 10 under 35 U.S.C § 112, first paragraph has been withdrawn.

Applicant's arguments with respect to claims 1, 2 and 10-14 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

**Claims 1 and 2 are rejected under 35 U.S.C. 102(a) as being anticipated by Hewlett-Packard Firehunter Concepts Guide.**

Regarding claim 1, Hewlett-Packard Firehunter Concepts Guide discloses *a method for monitoring an e-commerce installation, the e-commerce installation having a plurality of servers organized into a plurality of tiers* (the organization of e-commerce installation is illustrated at FIG. 1-2, pages 2-2, 2-3, 2-4), *each tier having a different e-commerce responsibility* (the name of each server illustrates its own responsibility, for example, E-Mail server is responsible for electronic mails...), *the servers of each tier generating log files and maintaining databases* (at the leaf nodes of FIG. 1, page 2-2, events are recorded and stored are examples of log files and databases).

- As further disclosed in Hewlett-Packard Firehunter Concepts Guide, *a plurality of software agents are installed onto the plurality of servers, respectively* (as illustrated at pages 1-8, 1-9, an agent executes tests as *software agents*, a particular test is set up for a particular server is illustrated at chapter 3, Tests and Measurement), *wherein each of the plurality of software agents retrieves at least one of the log files from an associated server* (an example Email service test is illustrated at page 3-5, availability measurement corresponding to availability log file of mail server as in FIG. 1 is included in the test implies retrieving).
- The right hand pane of FIG. 2 indicates the step of *graphically presenting the measurements*, and implies the step of *reading the retrieved log files and querying the databases to obtain information stored therein, the information comprising performance measurements of the installation* (availability graph of FIG. 2 corresponds to availability test as in pages 3-3, 3-4, the availability log file as in FIG. 1 is

retrieved and read to include in the test, other performance measurement are queried for the test).

Regarding claim 2, Hewlett-Packard discloses *a method for monitoring an e-commerce installation, the e-commerce installation having a plurality of servers* (the organization of e-commerce installation is illustrated at FIG. 1-2, pages 2-2, 2-3, 2-4) *generating log files and maintaining databases* (at the leaf nodes of FIG. 1, page 2-2, events are recorded and stored are examples of log files and databases).

- As illustrated at FIG. 2 and page 2-5, *the plurality of servers are organized into at least a web server tier* (web service), *a session server tier* (Availability, TotalResponseTime...), *a transaction server tier* (SMTP, POP3 services), *and a database server tier* (News service).
- As further disclosed in Hewlett-Packard Firehunter Concepts Guide, *a plurality of software agents are installed onto the plurality of servers, respectively* (as illustrated at pages 1-8, 1-9, an agent executes tests as *software agents*, a particular test is set up for a particular server is illustrated at chapter 3, Tests and Measurement), *wherein each of the plurality of software agents retrieves at least one of the log files from an associated server* (an example Email service test is illustrated at page 3-5, availability measurement corresponding to availability log file of mail server as in FIG. 1 is included in the test implies retrieving).
- The right hand pane of FIG. 2 indicates the step of *graphically presenting the measurements*, and implies the step of *reading the retrieved log files and querying the*

*databases to obtain information stored therein, the information comprising performance measurements of the installation* (availability graph of FIG. 2 corresponds to availability test as in pages 3-3, 3-4, the availability log file as in FIG. 1 is retrieved and read to include in the test, other performance measurement are queried for the test).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hewlett-Packard Firehunter Concepts Guide in view of Firehunter/L 3.0.**

Regarding claim 10, Hewlett-Packard discloses a method for monitoring an e-commerce installation. As illustrated at FIG. 2 and page 2-5, *the e-commerce installation comprising a web server tier* (web service), *a session server tier* (SMTP, POP3 services), *a transaction server tier* (E-mail service), *and a database server tier* (News service), *each having separate e-commerce responsibilities* (the name of each server illustrates its own responsibility, for example, POP3 services is responsible for retrieve e-mail from a mail server...).

- The right hand pane of FIG. 2 at page 2-4 indicates the step of *performing user transaction tests and reporting user transaction test results*.
- As illustrated at chapter 3, Test and Measurements is the step of *measuring system performance data for each of the web server, the session server, and transaction server, and the database server*.

Hewlett-Packard Firehunter Concepts Guide does not illustrate the step of *measuring business performance data comprising monetary volume transacted by the e-commerce installation during a time period*.

However, one of Firehunter/L 3.0 features is to allow a user to generate revenues with sophisticated reporting including multi-line graphs and web-based reporting (Features and Benefit: Firehunter/L 3.0), and obviously, the generated revenues is measured similarly to the events as shown in right hand pane of FIG. 2 as discussed above with the indicated time period.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to include monetary volume in measurement data in order to report revenue of a web service.

Regarding to claims 11, 12 and 13, Hewlett-Packard Firehunter Concepts Guide and Firehunter/L 3.0, in combination, teach all of the claimed subject matter as discussed above with respect to claim 10, Firehunter/L 3.0 further discloses *the business performance data further comprises financial data transacted by the e-commerce installation during a time period, collecting the system performance data and the business performance data from the e-commerce installation; and transferring the system performance data and the business performance data to the computer system, processing the business performance data to generate business graphics illustrating billing performance measured against business performance baselines and business performance thresholds* (Firehunter/L 3.0), Hewlett-Packard Firehunter Concepts Guide further discloses the step of *processing the system performance data to generate system graphics illustrating system performance measured against system performance baselines and system performance thresholds* (Hewlett-Packard Firehunter Concepts Guide) .

Regarding claim 14, Hewlett-Packard discloses *a method for monitoring an e-commerce installation, the e-commerce installation having a plurality of servers* (the organization of e-commerce installation is illustrated at FIG. 1-2, pages 2-2, 2-3, 2-4) *generating log files and maintaining databases* (at the leaf nodes of FIG. 1, page 2-2, events are recorded and stored are examples of log files and databases).



- As illustrated at FIG. 2 and page 2-5, *the plurality of servers are tiered to have separate e-commerce responsibilities* (web, SMTP, POP3 services, News service).
- As further disclosed in Hewlett-Packard Firehunter Concepts Guide, *software agents are associated to each of the plurality of servers and installed on the respective associated servers* (as illustrated at pages 1-8, 1-9, an agent executes tests as *software agents*, a particular test is associated and set up for a particular server is illustrated at chapter 3, Tests and Measurement).
- As taught at pages 1-8, 1-9, *software agents are activated to access the log files and query the databases on the associated servers to obtain performance measurement* (tests are executed by an agent. Availability graph of FIG. 2 corresponds to availability test as in pages 3-3, 3-4, the availability log file as in FIG. 1 is retrieved and read to include in the test, other performance measurement are queried for the test).
- The right hand pane of FIG. 2 indicates the step of *graphically presenting the performance measurements*.

Hewlett-Packard Firehunter Concepts Guide does not explicitly teach performance measurement is *business performance measurement*.

However, one of Firehunter/L 3.0 features is to allow a user to generate revenues with sophisticated reporting including multi-line graphs and web-based reporting (Features and Benefit: Firehunter/L 3.0).

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to include business measurement data in order to report revenue of a web service.

Regarding claim 15, Hewlett-Packard Firehunter Concepts Guide and Firehunter/L 3.0, in combination, teach all of the claimed subject matter as discussed above with respect to claim 14, Firehunter/L 3.0 further discloses *business performance measurements are financial performance measurements* (Features and Benefit: Firehunter/L 3.0).

Regarding claim 16, Hewlett-Packard Firehunter Concepts Guide teaches all the claim subject matters as discussed above with respect to claim 1, but does not explicitly teach *the performance measurements are business performance measurements*. However, one of Firehunter/L 3.0 features is to allow a user to generate revenues with sophisticated reporting including multi-line graphs and web-based reporting (Features and Benefit: Firehunter/L 3.0). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to include business measurement data in order to report revenue of a web service.

Regarding claim 17, Hewlett-Packard Firehunter Concepts Guide and Firehunter/L 3.0, in combination, teach all of the claimed subject matter as discussed above with respect to claim 16, Firehunter/L 3.0 further discloses *business performance measurements are financial performance measurements* (Features and Benefit: Firehunter/L 3.0).

***Allowable Subject Matter***

Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding to claim 3, Hewlett-Packard Firehunter Concepts Guide and Firehunter/L 3.0 fail to suggest or disclose *the web servers tier comprises a plurality of web servers with each of said the plurality of web servers generating log files, said the log files comprising hit rate data, hosts served data, data volume data, error rates data, log file size monitor data, system load data, and generic data, said the session servers tier comprises a plurality of session servers with each of said the plurality of session servers generating a plurality of log files, said the plurality of log files comprising users served data, restarts data, IM status data, IM load data, database connectivity data, error rates data and system load data, said the transaction servers tier comprises a plurality of transaction servers with each of said the plurality of transaction servers generating a plurality of log files and a plurality of databases, said the log files comprising open and discarded cart rates data, shoppers in store data, authorized, cancelled, declined data, payment service errors data, inventory status data, and system load data, and said the databases comprising sales per hour data, items sold per hour data, new order rates data, processed order rates data, fulfilled order rates data shipping network connectivity data, orders awaiting authorization data, and orders awaiting shipment data; and said the database servers tier comprises a plurality of database servers with each of said the plurality of database servers generating a plurality of databases, said the plurality of databases comprising database access performance data, database size monitor data, database connectivity error rate data, and system load data.*

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUNG Q PHAM whose telephone number is 571-272-4040. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN E BREENE can be reached on 571-272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2162

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Examiner Hung Pham  
February 10, 2005

  
SHAHID ALAM  
PRIMARY EXAMINER